



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

9/28/2017

Ms. Jessica Pennington
Director of Safety and Environmental Compliance
Emerald Transformer
4509 State Hwy 83
Defuniak Springs, Florida 32433

Steve Peterson
Facility Operations Manager
Clean Harbors Los Angeles, LLC
5756 Alba Street
Los Angeles, California 90058

Re: Clean Harbors Los Angeles, LLC Change of Ownership and Revised TSCA PCB Commercial Storage Permit Application – EPA ID # CAD050806850

Dear Ms. Pennington and Mr. Peterson,

Thank you for the documents submitted to the U.S. Environmental Protection Agency (U.S. EPA) regarding requests for change of ownership and change in financial assurance mechanism for the Clean Harbors Los Angeles facility, located at 5756 Alba Street, Los Angeles, CA 90058 (Facility). After review, the U.S. EPA has determined that the documentation is incomplete. Additional information and appropriate documents must be correctly submitted before U.S. EPA can evaluate and act on the transfer of ownership and the request for change in financial assurance.

Background – Facility Ownership

Clean Harbors Los Angeles, LLC (CHLA) operates the Facility under an Approval for Commercial Storage and Disposal of PCBs (Approval) issued October 24, 2013. Based upon information submitted by CHLA during the application process, the Approval states that “This Approval designates Clean Harbors as the Owner and Operator of the Facility.” and that it was issued to “Clean Harbors as site owner/operator (the “Owner/Operator”)”. Section II of the Approval states that the “Clean Harbors Los Angeles, LLC facility (‘Facility’)... owns and occupies 2.6 acres of land zoned for light manufacturing and enterprise.”

In a letter to Clean Harbors Inc. dated May 11, 2017, U.S. EPA consented to the transfer of CHLA to Transformer Services Holdco, LLC (Transformer), a wholly owned subsidiary of Clean Harbors Inc., as part of an internal reorganization of Clean Harbors Inc. That letter stated:

If there is any future change in ownership of the property, or the proposed transfer of the right to operate PCB management activities at the Facility, including transfer of ownership or control of CHLA or Transformer Services Holdco LLC, then U.S. EPA expects to be informed in accordance with Section VI Part B of the TSCA Approval.

In a letter to U.S. EPA dated June 12, 2017, Clean Harbors Inc. stated that an agreement was in place to sell the outstanding membership interests or shares of CHLA's parent company, Transformer Services

Holdco, LLC, to Emerald Transformer Western States, LLC (Emerald). This letter stated:

CHLA will continue to operate and/or own the Facility. The Managers of the facility will remain the same, and all employees of the facility will continue to work at the Facility. Financial assurance instruments approved by your agency will remain in place. CHLA will remain a separate and distinct legal entity, and the transaction will not have an impact on CHLA corporate structure.

Pursuant to correspondence from Jeff Scott of U.S. EPA Region 9 dated May 11, 2017, CHLA is contacting you to provide notice of this change. Because the Owner and Operator remain unchanged, and the approved financial assurance will remain in place, it is our understanding that a formal permit modification is not required.

On July 7, 2017 U.S. EPA, Clean Harbors Inc., and Emerald had a telephone call to discuss the June 12 letter and U.S. EPA's need for proper documentation. During that call, U.S. EPA was informed that the sale had already taken place.

Background – Financial Assurance and Name Change

On July 12, 2017, U.S. EPA received documents from Emerald which included copies of surety bonds and a document titled "Facility TSCA Permit Application Administrative Updates." This document identifies CHLA as a member organization of Transformer Services Holdco LLC, owned by Emerald Transformer Western States LLC, and identifies Emerald Transformer Western States LLC as "building and land owner" while CHLA remains identified as the operator.

The financial assurance mechanism in place in the Approval for the Facility is closure insurance, per 40 C.F.R. § 761.65(g)(5). This current financial assurance mechanism stays in place until U.S. EPA receives substitute financial assurance that meets all requirements for form and method of submission, and U.S. EPA accepts that new financial assurance and releases the existing policy. We appreciate the June 29, 2017 letter from the current insurance provider, XL Catlin Insurance, acknowledging that the financial assurance remains in place. In a letter to U.S. EPA dated September 8, 2017 Clean Harbors Inc. submitted an updated Certificate of Insurance for Closure issued by Indian Harbor Insurance Company for the Facility. This letter stated:

The insurance policy has been renewed and the closure coverage has been increased for inflation from \$91,598 to \$92,789, effective September 6, 2017. The new policy number is PEC004201304.

On July 12, 2017 Emerald submitted to U.S. EPA by email the proposed new financial assurance which consisted of copies of two performance bonds with Emerald as the Principal and Lexon Insurance Company as the Surety, citing 40 C.F.R. § 761.65(g)(3). Section 761.65(g)(3) is a surety bond guaranteeing performance at closure and this provision of the PCB Regulations discusses the submission and use of the surety bond instrument specified at 40 C.F.R. § 264.151(c) and the standby trust specified at 40 C.F.R. § 264.143(c)(3).

On September 11, 2017 Emerald sent to U.S. EPA two Performance Bonds, a diagram of the organizational structure of Emerald Transformer and a letter dated August 31, 2017 stating:

The entity that is the owner and operator of the transformer service facility did not change in the transaction. However, as a result of the transaction, Clean Harbors Inc. required Emerald

Transformer to change the legal name of the operating entity. As a consequence, Clean Harbors Los Angeles, LLC changed its legal name to Emerald Transformer Los Angeles LLC.

The facility management and operators will remain the same. There is no intention to change or re-assign these individuals. Further, there is no intention to change or modify any operations conducted at the facility.

We intend to request an administrative permit amendment for each permit providing for a change in the name of the facility's operator/permittee. The name change is the only permit amendment we intend to seek. The name of the permittee for the Los Angeles facility (currently Clean Harbors Los Angeles, LLC) will become Emerald Transformer Los Angeles LLC. We intend to coordinate with your office on the submittal of our requests to amend the permit.

Selected PCB Regulations and Approval Provisions Concerning Transfer of Ownership

The PCB Regulations at 40 C.F.R. § 761.65(j) state:

Changes in ownership or operational control of a commercial storage facility. The date of transfer of interim status or final approval shall be the date the U.S. EPA Regional Administrator (or appropriate official at U.S. EPA Headquarters) provides written approval of the transfer. U.S. EPA will provide a final written decision within 90 days of receipt of the complete new or amended application. The Agency will approve the transfer if the following conditions are met:

- (1) The transferee has established financial assurance for closure pursuant to paragraph (g) of this section using a mechanism effective as of the date of final approval so that there will be no lapse in financial assurance for the transferred facility.
- (2) The transferor or transferee has resolved any deficiencies (e.g., technical operations, closure plans, cost estimates, etc.) the Agency has identified in the transferor's application.

Subsection VI.B. of the Approval addresses transfer of ownership:

B. Transfer of Ownership

1. At least 30 days prior to the proposed transfer of ownership of the property or the proposed transfer of the right to operate PCB management activities at the Facility, Clean Harbors shall:
 - a. Submit notice to U.S. EPA that includes a notarized affidavit signed by the transferee which states that the transferee will abide by this Approval [40 C.F.R. § 761.65(j)]; and
 - b. Provide the financial assurance for closure that the transferee will have in effect as of the date of proposed transfer.
2. The date of transfer of this Approval shall be the date U.S. EPA provides written approval of the transfer.

Subsection VI.A. of the Approval also contains relevant provisions concerning administrative changes

and modifications of the Approval. Changes in ownership or operational control of a facility is a Class 1 permit modification requiring prior U.S. EPA approval.

Required Information and Documentation

Information and appropriate documents must be correctly submitted for U.S. EPA to act on the requests from CHLA and Emerald. U.S. EPA will also evaluate the need for administrative edits on the Approval and determine whether a permit modification is required. Please provide the following information and documentation regarding change in ownership of CHLA and the Facility site:

1. U.S. EPA has received submittals from Emerald on July 12, 2017 and September 11, 2017. These submittals were not accompanied by the certification statement and signature of a Responsible Official as required by 40 C.F.R. § 761.3. In accordance with Subsection IV.B.3 of the Approval, all documents which are to be considered by U.S. EPA must be resubmitted with the certification statement and signature.
2. Emerald on July 12th identified Emerald Transformer Western States LLC as “building and land owner” in the submitted “Facility TSCA Permit Application Administrative Updates.” Provide the date that Emerald Transformer Western States, LLC became the land owner of the Facility.
3. In July Clean Harbors Inc. clarified to U.S. EPA that William Connors is a responsible official of the parent company Clean Harbors Inc. but not an employee of CHLA that transferred over with the Facility to Emerald. Thus, the affidavit submitted by Mr. Connors in relation to CHLA’s transfer to Transformer in Clean Harbors Inc.’s internal reorganization does not fulfill the requirement in Subsection VI.B.1.a of the Approval to submit a notarized affidavit signed by the transferee stating that the transferee will abide by the Approval. Transferee must submit an affidavit.
4. Submit a Revised TSCA PCB Commercial Storage Permit Application as a legible pdf document.
 - a. The markup pages submitted by Emerald on July 12, identified as “Facility TSCA Permit Application Administrative Updates,” have highlights to indicate where changes were made. Identifying the areas of change is appreciated but these highlights make the document hard to read. In submitting the Revised TSCA PCB Commercial Storage Permit Application, please submit a clean copy along with a markup copy showing what information has been updated.
 - b. Identify if any other items need updating due to the change in ownership and change in name and resubmit any necessary changes. For example, state whether changes in ownership will affect the existing closure plan. See 40 C.F.R. § 761.65(e)(4).
 - c. In Subsection 2.3 identify the principal officers of the Facility.
5. Provide a copy of the financial assurance documents for the Facility’s RCRA permit that you have submitted to the California Department of Toxic Substances Control (DTSC).
 - a. Provide an explanation of the financial assurance documents submitted to DTSC, including financial assurance documents related to closure and sudden accidental occurrences. The Facility’s coverage for sudden accidental occurrences is

discussed in section 9.14.3 of the RCRA Part “B” Application that is incorporated as Appendix C to the Approval.

- b. Clearly identify which financial instrument(s) are being used for obligations under the RCRA permit versus obligations under the TSCA Approval, and identify documents being utilized for both RCRA and TSCA Approval obligations. Clearly explain the cost estimates being used and how each obligation is being met. For example, is Surety bond number 1143853 (attachment “Performance Bond_LA2 063017”), with the face value of \$1,263,267, being used for the RCRA permit?
 - a. U.S. EPA has reached out to DTSC and recommends that the Facility coordinate as necessary with both U.S. EPA and DTSC to ensure that all financial assurance documents are submitted to the appropriate agency in the correct format, with the correct language, and adjusted for inflation.
6. A properly executed and properly submitted Standby Trust Agreement must be submitted to U.S. EPA Region 9 with the bond(s). Please see the enclosed Standby Trust Agreement that contains the current language for standby trusts for PCB storage facilities. Sending a pdf copy is not considered proper submission of the required financial assurance documents. An originally signed duplicate of the trust agreement must be submitted to U.S. EPA Region 9 with the surety bond. See 40 C.F.R. §§ 765(g)(3) and 264.143(c)(1) and 264.143(c)(3)(i).

If you have questions regarding this letter, please contact Madison Sanders-Curry of my staff at (415) 972-3855 or sanders-curry.madison@epa.gov.

Sincerely,



Barbara Gross, Manager
Permits Section
Land Division

Enclosure: Standby Trust Agreement

cc: (w/o enclosure):

William Connors
Clean Harbors Inc.

STANDBY TRUST AGREEMENT

This TRUST AGREEMENT (the "Agreement") is entered into as of *[insert date]* by and between *[insert name of owner or operator]*, a *[insert State]* *[insert "corporation", "partnership", "association", or "proprietorship"]* (the "Grantor"), and *[insert name of corporate trustee or a national bank]*, (the "Trustee"), incorporated in the State of _____.

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States Government, has established certain regulations applicable to the Grantor requiring that an owner or operator of a PCB commercial storage facility shall provide assurance that funds will be available when needed for closure or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility or facilities identified herein, and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement: (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor. (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A *[on schedule A, for each facility list the EPA Identification Number, name and address of the facility(ies), and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement]*.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the "Fund") for the purpose of assuring compliance with the closure and post-closure care requirements established by EPA for the facilities identified on Schedule A. Accordingly, the Fund is established for the benefit of parties that conduct work consistent with the approved closure and or post closure plan. The Grantor and the Trustee acknowledge that the Fund and all expenditures from the Fund shall be to fulfill the legal obligations of the Grantor under such regulations, and not any obligation of EPA.

The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility, for the amount or adequacy of any additional payments necessary to discharge any liabilities of the Grantor established by EPA, nor shall the Trustee have any duty to collect such additional amounts from the Grantor.

Section 4. Payment for Closure and Post-Closure Care.

The Trustee shall make payments from the Fund only for closure and post-closure care of the facilities covered by this Agreement only after EPA has advised the Trustee that work has been completed that complies with the requirements of 40 C.F.R. § 761, Subpart D, and the terms of the EPA Approval under § 761, Subpart D that specifies closure and post-closure care activities. The Trustee shall not refund to the Grantor any amounts from the

Fund unless and until EPA has advised the Trustee that the closure and/or post-closure care activities have been successfully completed. The Trustee shall not release any funds to the Grantor that are necessary to cover expenditures for any closure or post-closure care activities covered by this Agreement that remain uncompleted.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and,
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U. S. C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality

thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator or Director, Office of Resource Conservation and Recovery ("ORCR") a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator or Director, ORCR shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator Director, ORCR to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, or the Director, ORCR, or

his/her designees and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator or Director, ORCR, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator OR Director, ORCR, or by the Trustee and the appropriate EPA Regional Administrator or Director, ORCR if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator or Director, ORCR, or by the Trustee and the EPA Regional Administrator or Director, ORCR if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator Director, ORCR issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of _____.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective representatives duly authorized and their seals to be hereunto affixed and attested as of the date first above written.

GRANTOR

TRUSTEE

By: _____

By: _____

[Print name]
Its: _____
[Title]
Attest:

[Print name]
Its: _____
[Title]
Attest:

Its: _____
[Title]

Its: _____
[Title]

[SEAL]

[SEAL}

CERTIFICATION OF ACKNOWLEDGMENT *[The following represents an example of the certification of acknowledgement which must accompany the trust agreement as required under 40 CFR § 264.151(a)(2). State requirements may differ on the proper content of this acknowledgment.]*

Before me came the individual whose identity I confirmed as _____, and whose true signature is set forth above; wherefor have I set my hand and seal this _____ day of _____, 20__.

Notary Public